

## REMARKS

Claims 1-26 were pending in the application prior to this response. Claims 1-26 were rejected. Claims 1, 3, 7, 8, 9, 13, 19, 21 are amended. Claims 2, 4, 5, 6, 10-12, 14-16 18, 22, 23, 25 and 26 are cancelled herein. Reconsideration of the rejections of all pending claims is requested.

### I. Objection to the Specification

The specification was objected to due to a typographical error. This error has been corrected and the objection has been overcome.

### II. Rejection of Claim 8 Under 35 U.S.C. §112, Second Paragraph

Claim 8 was rejected under 35 U.S.C. §112, second paragraph, due to insufficient antecedent basis in line 4. Claim 8, as amended herein, overcomes the rejection. The applicant requests reconsideration of the rejection.

### III. Rejection of Claims 1-5, 7, 12-17, 19, and 24-26 Under 35 U.S.C. §102(b)

Claims 1-5, 7, 12-17, 19, and 24-26 were rejected under 35 U.S.C. §102(b) as being anticipated by Waclawsky (U.S. 5,974,457).

Claim 1 has been amended to incorporate the subject matter of claims 10 and 11. Therefore, the rejection of claim 1 and the rejections of the claims that depend therefrom are moot.

Claim 13 has been amended to incorporate the subject matter of claim 22. Therefore, the rejection of claim 13 and the rejections of the claims that depend therefrom are moot.

Claims 25 and 26 have been cancelled.

Based on the foregoing, the above-listed rejections are moot.

#### **IV. Rejection of Claims 6, 8-11, 18, and 20-23 Under 35 U.S.C. §103(a)**

Claims 6, 8-11, 18, and 20-23 were rejected under 35 U.S.C. §103(a) as being unpatentable under *Waclawsky*.

As set forth above, the elements of claim 10 and 11 have been incorporated into claim 1. Therefore, the rebuttal to the rejections of claims 10 and 11 will focus on claim 1, which is restated as follows:

A method for monitoring the operation of an electronic network, said network comprising a first electronic device and a second electronic device, said method comprising:

determining the utilization of a first data path between said first electronic device and said second electronic device;

determining the utilization of a second data path between said first electronic device and said second electronic device;

comparing said utilization of said first data path and said second data path over a period of time; and

providing an indication if said utilization of said first data path increases a preselected amount and said utilization of said second data path decreases a preselected amount during said period of time.

Claim 1, which now includes the elements of claims 10 and 11, is directed toward determining the utilization of data paths between first and second electronic devices over a period of time. An indication is provided if the utilization of a first data path increases a preselected amount and the utilization of a second data path decreases a preselected amount during the period of time.

According to the office action, *Waclawsky* fails to expressly disclose indicating at least one of a plurality of data paths changing more than a preselected value. The office action states that *Waclawsky* does teach effecting router changes after being provided with an indication that current network operating characteristics are outside

the bounds of normal behavior. The office action cites column 7, lines 60-67 and column 8, lines 1-6 of Waclawsky.

The applicant disagrees with the holding of the office action. More specifically, Waclawsky teaches effecting router changes if a network is operating outside of the bounds of normal behavior. Waclawsky does not teach monitoring the utilization of data paths. Claim 1, on the other hand, is directed to determining utilization of the data paths to determine if the utilization of one data path has increased and another data path has decreased. Thus, Waclawsky does not teach all the elements of claim 1.

Based on the foregoing, the rejection of claim 1 has been overcome. The applicant requests reconsideration of the rejection.

#### CLAIMS 3, 7, 8, AND 9

Claims 3, 7, 8, and 9 depend on claim 1 and are deemed allowable by way of their dependence and for other reasons. Therefore, the applicant requests reconsideration of the rejections.

#### CLAIM 13

Claim 13 is independent and has been amended to incorporate the elements of claim 18. Therefore, the rejection of claim 18 will be addressed with regard to claim 13. Claim 13, as amended herein, is restated as follows:

A monitoring device for monitoring an electronic network, said electronic network comprising a first electronic device and a second electronic device, said monitoring device comprising:

a computer operatively connected to said network; and

a computer-readable medium operatively associated with said computer, said computer-readable medium containing instructions for controlling said computer and said monitoring device by:

determining a plurality of data paths between said first electronic device and said second electronic device;

performing at least two measurements of a parameter of said network on said data paths, said at least two measurements yielding the utilizations of said plurality of data paths; and

providing an indication in if the utilization of a first of said data paths increases greater than a preselected amount and the utilization of a second of said data paths decreases less than a preselected amount.

As stated above, claim 13 now includes the elements of claim 18, which has been cancelled herein. Claim 18 was rejected on the same grounds as claim 10. Therefore, the applicant incorporates the rebuttals to the rejection of claim 10 into this rebuttal.

Claim 13 is directed, in part, to determining the utilization of data paths and providing an indication if the utilization of a first data path increases greater than a preselected amount and the utilization of a second data path decreases less than a preselected amount. As set forth above, this subject matter is not taught by *Waclawsky*. Therefore, *Waclawsky* does not teach all the elements of claim 13 and cannot render claim 13 obvious.

Based on the foregoing, the applicant requests reconsideration of the rejection.

#### CLAIMS 17, 19-21, and 24

Claims 17, 19-21, and 24 depend on claim 1 and are deemed allowable by way of their dependence and for other reasons. Therefore, the applicant requests reconsideration of the rejections.

**V. Double Patenting**

Claims 1-26 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting. The applicant will address this rejection after the amended claims have been addressed.

In view of the above, all of the pending claims are now believed to be in condition for allowance and a notice to that effect is earnestly solicited.

Respectfully submitted,

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